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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES - GENERAL

Case No.	<u>CV 08-8446 PSG (JCx)</u>	Date	<u>October 27, 2009</u>
Title	<u>Kapa Investment v. Cirrus Design Corp. et al.</u>		

Present:	<u>The Honorable Philip S. Gutierrez, United States District Judge</u>
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Wendy K. Hernandez	Not Present	n/a
Deputy Clerk	Court Reporter	Tape No.

Attorneys Present for Plaintiff(s): Attorneys Present for Defendant(s):

Not Present Not Present

Proceedings: **(In Chambers) Order Sustaining Objections by Teledyne Continental Motors, Inc. to Plaintiff's Use of Videos, Graphic or Illustrative Material Based on Avidyne Data (Exhibit 135)**

Pending before the Court are Objections by Teledyne Continental Motors, Inc. to Plaintiff's Use of Videos, Graphic or Illustrative Material Based on Avidyne Data (Exhibit 135 from the Parties' Joint Exhibit List). The Court finds the matter appropriate for decision without oral argument. *See Fed. R. Civ. P. 78; L.R. 7-15.* After considering the objections and response, the Court SUSTAINS the Defendant's objections.

I. Background

In November 2006, Plaintiff Kapa Investment ("Kapa") purchased an allegedly defective aircraft. On November 25, 2008, Kapa filed the instant action against, *inter alia*, Teledyne Continental Motors, Inc. ("Teledyne") and Cirrus Design Corporation ("Cirrus"). In July 2009, Cirrus took the plane for a test flight, and apparently installed a thumb drive to record data from the flight ("the Avidyne data"). *See Golden Decl.* ¶ 2. At the conclusion of the flight, the pilot allegedly announced that "it appeared nothing had been recorded." *Id.* However, in late September 2009, Kambiz Pahlavan, Kapa's sole shareholder, retrieved the Avidyne data. *See id.* ¶ 3. Kapa subsequently recorded the Avidyne data onto DVDs and delivered copies to opposing counsel. *See id.* According to Teledyne, its Avidyne data DVD contains over 377 separate data logs, many of which are over one hundred pages long. *See Objections* 2:20-22.

At the Final Pretrial Conference on October 19, 2009, Kapa indicated for the first time that it intended to use graphic images derived from the Avidyne data. *See id.* 2:6-9. Trial was

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originally scheduled to begin on October 27, 2009, *see* Dkt. #32, but was continued to November 3, 2009, *see* Dkt. #164. As of this date, Kapa has yet to provide Teledyne with the graphic images it intends to use at trial. *See Objections 2:11-13.*

II. Legal Standard

According to Local Rule 16-3,

If not already disclosed as a part of the exhibits in accordance with L.R. 16-2.3, the parties shall disclose copies of all graphic or illustrative material to be shown the trier of fact as illustrating the testimony of a witness *at least eleven (11) days before trial.* Graphic or illustrative material not so disclosed may not be used at trial except by order of the Court on a finding of good cause for failure to disclose.

L.R. 16-3 (emphasis added).

III. Discussion

Teledyne objects to Kapa's use of video, graphic, or illustrative material based upon the Avidyne data ("the subject exhibits"). As of this date, Kapa has disclosed neither the subject exhibits nor the relevant data segments that form the basis for the subject exhibits. Thus, Kapa did not disclose pursuant to Local Rule 16-2.3, triggering the disclosure obligation under Local Rule 16-3. *See* L.R. 16-2.3 ("The parties shall disclose all exhibits to be used at trial . . . as set forth in F.R.Civ.P. 26(a)(3)(A)(iii)."); Fed. R. Civ. P. 26(a)(3)(A)(iii) ("[A] party must provide to the other parties and promptly file . . . an identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises."). As it did not disclose the subject exhibits pursuant to Local Rule 16-2.3, Kapa was obligated to disclose copies of any graphic or illustrative material at least 11 days before the trial date. *See* L.R. 16-3. Trial was originally scheduled to begin on October 27, 2009, and Kapa first disclosed its intent to use the subject exhibits on October 19, 2009—eight days before the scheduled trial date. Furthermore, the Court continued trial to November 3, 2009, and as of this date, Kapa has yet to disclose the subject exhibits—now a mere seven days before trial. Accordingly, Kapa will not be permitted to use any graphic or illustrative material derived from the Avidyne data, unless the Court finds good cause for Kapa's failure to disclose.

Kapa has failed to establish good cause under Local Rule 16-3. Kapa retrieved the

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Avidyne data in late September, 2009, but first disclosed its intent to use the subject exhibits on October 19, 2009. Kapa does not offer an adequate explanation for this delay or for its continued failure to present the subject exhibits to opposing counsel. Kapa claims that it disclosed the data once it was retrieved, but it provided an overwhelming amount of raw data at that time and has still failed to identify the specific data segments it intends to rely upon in producing the subject exhibits. In addition to these deficiencies, Kapa has not identified which witness will use the graphical representation during trial. Therefore, the Court does not find good cause to excuse Kapa's nondisclosure and, thus, sustains Teledyne's objections to Exhibit 135.

IV. Conclusion

For the foregoing reasons, the Court SUSTAINS the Objections by Teledyne Continental Motors, Inc. to Plaintiff's Use of Videos, Graphic or Illustrative Material Based on Avidyne Data (Exhibit 135 from the Parties' Joint Exhibit List).

IT IS SO ORDERED.